

# EXHIBIT B

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF VERMONT**

**MERCHANTS BONDING COMPANY  
(MUTUAL)**

**AND**

**MERCHANTS NATIONAL BONDING,  
INC.**

**Plaintiffs,**

**v.**

**JEFFREY J. PECK, an individual**

**Defendant.**

**Civil Action No.: 2:24-cv-00845-cr**

**REBUTTAL AFFIDAVIT OF SHOSHANA ROTHMAN, ESQ.**

1. I, Shoshana Rothman, Esq., am over the age of eighteen years of age and am fully competent to testify to the matters stated hereto. I make the following statements based on my personal knowledge.
2. I am, and was at all times relevant to this matter, employed by Merchants Bonding Company (Mutual) and Merchants National Bonding, Inc. (collectively, “Merchants Bonding Company” or “Merchants” or “Surety”) as a Senior Contract Claims Attorney.
3. I hereby submit this Affidavit in response to the Affidavit of Jeffrey J. Peck filed in accordance with Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Injunctive Relief.
4. Merchants has incurred expenses and losses on all four projects, as related to this litigation, for which it provided surety bonds (the “Bonds”) on behalf of Defendant, iSun Industrial, LLC, iSun, Inc., and Peck Electric. Co. (collectively, the “Indemnitors”).

5. Merchants made payments to iSun, Inc.'s ("iSun") subcontractors and suppliers on the BD Solar Larson Project (the "Larson Project") because iSun advised Merchants that it could not make those necessary payments. Per the terms of Merchants' Payment Bond for the Larson Project, Merchants is "jointly and severally liable" to "to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract." In every instance of a payment to an iSun subcontractor or supplier, iSun was involved in verifying the amount Merchants paid.
6. BNRG Maine LLC ("BNRG"), the owner of the Larson Project, disputed that iSun achieved mechanical completion on the Project, assessed liquidated damages against iSun, and eventually terminated iSun from the Project. BNRG subsequently made demand on the Larson Bond.
7. Merchants did not "instigate" or "prompt" BNRG to terminate the Larson Project Contract in advance of the bankruptcy filings (the "Bankruptcy Filings") of iSun Industrial, LLC, iSun, Inc., and Peck Electric. Co. At no time prior to the Bankruptcy Filings did Merchants impart any knowledge of the Bankruptcy Filings on BNRG.
8. Merchants and BNRG entered into a settlement, with respect to the Larson Project, on September 4, 2024, with mutual releases. Accordingly, paragraph 10 of Jeffrey J. Peck's Affidavit is incorrect, as Merchants does not have "substantial claims" against BNRG. Merchants also disagrees with the accounting set forth by Mr. Peck in his Affidavit.
9. During all discussions with Mr. Peck relevant hereto, Merchants has reserved all rights under the Indemnity Agreement.
10. The value of the Bonds Merchants issued on behalf of the Indemnitors, as related to the above-captioned litigation, totals \$14,059,201.30.


11. Mr. Peck is also an individual indemnitor for nine (9) other bonds issued by Great Midwest Insurance Company, for the benefit of iSun Industrial, LLC and Peck Electric Co., the value of which total \$25,830,346.88.

12. While the sale of Mr. Peck's Florida Property was for \$1,960,000.00, Mr. Peck not once offered to use these funds to reimburse Merchants for the losses it continues to incur on the Bonds.

13. Mr. Peck has also not offered to use the "bonuses" he received as iSun's executive compensation plan in 2023, to satisfy any of Merchants' losses on the Bonds.

I do declare under penalty of perjury that the information set forth herein is to the best of my knowledge, information and belief.

**Dated:** September 30, 2024



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STATE OF: Virginia

ss:

CITY/COUNTY OF: Fairfax

SUBSCRIBED and SWORN to before me this 30th day of September, 2024.



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NOTARY PUBLIC

My commission expires: Sept 30<sup>th</sup> 2028

